



125 BROAD STREET, NEW YORK, NY 10004 TEL 212 471-8500 FAX 212 344-3333 WWW.HERZFELD-RUBIN.COM

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Daniel V. Gsovski  
Direct Dial 212: 471-8512  
[dgsovski@herzfeld-rubin.com](mailto:dgsovski@herzfeld-rubin.com)

**BY ECF**  
**Hon. Ronald L. Ellis**

**Re: Pinks v. M&T Bank Corp., 1:13-cv-1730 LEK-RWE (S.D.N.Y.)**

Dear Magistrate Judge Ellis:

Pursuant to Your Honor's directive at the telephone conference of March 26, 2015, we have examined the "South Carolina spreadsheet" which M&T previously submitted to us. We can confirm that it does not, on its face, set forth figures that would yield the requisite jurisdictional minimum, which must exceed \$5,000,000 in aggregate, statutory damages exclusive of interest and costs, if the case were limited to a putative South Carolina class.

As indicated on the conference call, however, we were not able to stipulate or admit to the accuracy of these amounts in light of the informal and unverified nature of the spreadsheet, and the fact that the spreadsheet is facially incomplete. Additionally, as we have not been privy to the underlying documents upon which the spreadsheet is based, we are not in a position to independently verify its accuracy or completeness, so as to allow us to make binding admissions adverse to the putative class of an inadequate amount in controversy to a "legal certainty." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938); *Back Doctors, Ltd. v. Metropolitan Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830 (7<sup>th</sup> Cir. 2011); *Carling v. Peter*, 2013 WL 865842 \*4 (S.D.N.Y. Mar. 8, 2013). Within the last hour we have received M&T's filings (Dkt. #85, 85-1, 85-2, 85-3), which include certain supplemental evidentiary submissions. However, we have not yet had an opportunity to review them and must therefore maintain our position.

Nonetheless, we acknowledge that restricting this case to a putative South Carolina class on jurisdictional grounds could lead to the dismissal of the action on jurisdictional grounds, upon an appropriate evidentiary determination.

There is no dispute, however, that the denial of M&T's Rule 12(c) Motion attacking Plaintiff's "Article III standing" will result in a putative class with an amount in controversy in excess of \$5,000,000.00. In accordance with Your Honor's directive, we are not submitting additional argument on this (or any other) pending topic, including whether multi-state discovery should proceed at this time pending resolution of M&T's Rule 12(c) motion.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Daniel V. Gsovski', is written over the typed name.

Daniel V. Gsovski (dg4413)  
Counsel for Plaintiff Jerry Pinks

cc: All counsel (by ECF)